


UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

**FILED**  
NOV 07 2007  
  
CLERK

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UNITED STATES OF AMERICA,  
  
Plaintiff,

CR 07-30024 (01)

-VS-

ORDER AND OPINION

WILLIAM WAYNE ZIEGLER, SR.,  
  
Defendant.

\*\*\*\*\*

The defendant filed a motion (Doc. 29) to suppress statements he made to an FBI agent on November 29, 2005, and January 6, 2006. The claims are that his statements were not preceded by either a Miranda warning or a Griffin warning; therefore, he claims the statements were not voluntary.

United States Magistrate Judge Moreno held a hearing on the motion on October 17, 2007. I have read the transcript (Doc. 68) of that hearing. Judge Moreno on October 24, 2007, orally issued his report and recommendation (Doc. 67). I have read that transcript. The defendant was not given Miranda warnings because he was not in custody; no such warning was required as a matter of law. Nor would a reasonable person under the circumstances have believed that he was in custody. Although the defendant "wondered" whether he needed an attorney, he specifically advised that he was not asking for an attorney and was willing to continue with the interview. He did not invoke his right to counsel.

The magistrate correctly ruled that the government should be prohibited from offering in its case in chief any testimony or evidence about a polygraph examination. Whether any such evidence might become admissible as rebuttal evidence remains to be seen. If the government intends to offer any such evidence, counsel shall first approach the bench and a ruling will be made.

In addition to the oral rulings on the record, the magistrate issued a report and recommendation (Doc. 70). The defendant filed objections (Doc. 75).

I have conducted a *de novo* review of all matters. The report and recommendation should be accepted. The motion of the defendant should be denied. The objections should be overruled.

Now, therefore,

IT IS ORDERED, as follows:

- 1) The motion to suppress (Doc. 29) is denied.
- 2) The report and recommendation (Doc. 70) should be adopted.
- 3) The objections (Doc. 75) of the defendant should be overruled.

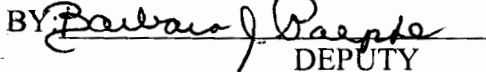
Dated this 7<sup>th</sup> day of November, 2007.

BY THE COURT:

  
CHARLES B. KORNMANN  
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY:   
DEPUTY

(SEAL)